IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.505 OF 1990.

Layappa Dharmarao Chadchan
Res. at Bhandarkavta,
Tal : South Solapur,
Dist : Solapur. .. Appellant
(Original Defd. No.1)

vs.

1. Sou Malanbai Shridhar Gurav
res. at Bhandarkavathe,
Tal : South Solapu,
Dist : Solapur.

2. Shri Prakash Shridhar Gurav,
@ Birajdar res.at Bhandarkavathe,
Tal : South Solapur,
Dist : Solaur.

3. Shri Ashok Shridhar Gurav
@ Birajdar res. at Bhandarkavathe,
Tal : South Solapur,
Dist : Solapur.

4. Shri Shridhar Madhav Gurav
@ Birajdar, res. at Bhandarkavathe,
TaL South Solapur,
Dist : Solapur. ..Respondents
(Nos.1 to 3 original
plaintiffs and R.No.4
original defendant No.2)

Mr. Umesh R. Mankapure, Advocate for Appellant.

Mr.T.B.Deshmukh, Advocate for Respondent.

CORAM : S.R.SATHE, J.

DATED : 18TH AUGUST, 2004.

ORAL JUDGMENT :

1. Being aggrieved by the judgment and order passed by the Court of 4th Additional District Judge, Solapur,in Civil Appeal No.521 of 1988, whereby the order passed by the 3rd Joint Civil Judge, Junior Division, Solapur in Regular Civil Suit No.592 of 1981 was set aside and the appeal was allowed and it was declared that decree passed in Regular Civil Suit No.880 of 1976 is not binding on the plaintiffs, the original defendant no.1 has preferred this appeal. For the sake of convenience hereafter the parties shall be referred to as plaintiffs and defendants.

2 Brief facts giving rise to this second appeal are as under :

. The open space admeasuring 27ft X 24ft situated at village Bhandarkavathe, Ta; : South Solapur, Dist : Solapur, was a joint family property of plaintiff nos.1 and 2 and defendant no.2. Plaintiffs 1 and 2 are the sons of

defendant no.2 and plaintiff no.3 is the wife of defendant no.2. On 13.11.1969 the defendant no.1 got executed a sale deed of the suit property from defendant no.2. i.e. the father of plaintiffs 1 and 2. He sold the said property to defendant no.1 for Rs.400/-. Thereafter the defendant no.1 filed a Regular Civil Suit for possession against his vendor i.e. defendant no.2. Ex-parte decree was passed in the said suit on 13.11.1979. On the basis of the said decree the defendant no.1 filed Regular Darkhast 168 of 1980 for possession . At the time of execution of the said decree, the plaintiffs came to know about the said decree. Hence he filed the present suit for declaration that decree passed in the regular suit No.880 of 1976 is not binding on them because according to them though the defendant no.2 was manager and karta of the joint family, he was addicted to drinking and he sold the property without there being any legal necessity.

. Defendant no.1 filed his written statement and opposed the suit claim by contending that when defendant no.2 sold the said property he was

indebted and in need of money even to meet the joint family expenses. So, according to defendant the sale deed was executed for legal necessity and as such binding on other co-sharers, namely the plaintiffs. The defendants, therefore, prayed for dismissal of the suit.

. On these pleadings the trial court framed issues at exhibit 18 and after considering the evidence adduced by the parties came to the conclusion that the defendant no.2 sold the suit property as he was indebted and the transaction for sale was entered into as a result of legal necessity. The trial court therefore dismissed the plaintiffs suit.

. Being aggrieved by the said order, the plaintiff filed civil appeal no. 521 of 1985 in the District Court, Solapur. After hearing both the parties the appellate court came to the conclusion that defendant no.1 had failed to adduce any evidence to show that the sale deed was executed for legal necessity. The first appellate court, therefore, set aside the finding

of the trial court and allowed the appeal and also came to the conclusion that the decree passed in the Regular Suit No. 880 of 1976 is not binding on the plaintiffs. The original defendant no.1, purchaser of the property therefore filed this second appeal.

3. From the perusal of the record it appears that at the time of admission on 5.11.1990 this court observed " Admit on ground nos.4 to 6, which are substantial question of law". The said grounds are as under :

> "4. Whether the Respondent Nos.1 to 3 are entitled to claim that decree in Regular Civil Suit No.880 of 1976, is not binding on them, merely they are not parties to the same, when the transaction in question was by Respondent no.4 for and on behalf of the joint family, for legal necessities?
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> 5. Whether the learned Appellate Court is justified in holding that sale deed dated 15.11.1969 is not binding on Respondent Nos.1 to 3, when admittedly their family was already indebted, showing that, there was legal necessity for Respondent No.4 to sale to suit land.
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> 6. Whether the Respondent no.1 can claim relief, of setting aside the decree in Regular Civil Suit No.880 of 1976, in view of the fact, that even assuming the property was ancestral,she has no right

whatsoever in that property?"

4. The learned Advocate, for the Appellant /defendant no.1 has urged only two points. Firstly, he submitted that the first appellate court has not properly appreciated the evidence on record and wrongly held that the defendant no.1 has failed to prove that the sale deed was executed by defendant no.2 for legal necessity. According to him there was sufficient evidence to show that at the relevant time the defendant no.2 was indebted and as such he was compelled to sell the suit property. Secondly, he canvassed before me that the first appellate court infact should have taken into consideration the fact that the plaintiff had also admitted that there was loan to the joint family and as such the transaction was entered into by defendant to meet the pious obligation and as such the sale deed as well as the decree passed in Regular Civil Suit No..880 OF 1976 were binding on the plaintiff. He, therefore, submitted that the appeal be allowed and the order passed by the appellate court be set aside. As against this, the learned advocate for the respondents/plaintiffs supported the judgment

and order passed by the first appellate court.

5. It is an admitted fact that the suit property was joint family property of plaintiffs 1 and 2 and defendant no.2. It is also not in dispute that the defendant No.2 was the manager and karta of the joint family. Admittedly, the suit property was sold only by defendant no.2 to defendant no.1 and at that time the other co-sharers were not parties to the sale deed, nor there was anything on record to show that they had given consent for the said transaction. It is true that the manager or karta has got every power to sell the joint family property if it is being sold for legal necessity or the transaction is for the benefit of estate. If it is not so, then ofcourse, the other co-sharers are certainly entitled to challenge the said transaction and contend that the said transaction is not binding on them. It is also well settled that when the sale deed is executed by the manager or the karta of Joint Hindu Family and the said sale deed is challenged on the ground that it was not sold for legal necessity, the burden lies on the aliance to

show that the transaction was entered into for legal necessity. Bearing in mind this position, we have to see the evidence on record and find out whether the conclusions drawn by the first appellate court are legal and correct.

6. At the outset, it must be mentioned that defendant no.1 has not even bothered to produce the sale deed in question on record. He has however stated that at the relevant time the defendant no.1 was indebted and as such he sold the suit property. He has also stated that at the relevant time, the son of defendant no.2 was suffering from Typhoid and as such he was in need of money and so for these reasons the defendant no.2 sold the suit property. The plaintiff has however stated that there was no legal necessity. Ofcourse, the defendant no.3 has given one stray admission wherein she has stated that there was loan to the family, but there is absolutely no evidence to show how much amount was needed by the joint family, whether at the relevant time there was person undertaking to satisfy the said loan and for that purpose to sale the suit property and

that too for such meagre amount. Infact, the defendant no.1 has clearly admitted in his cross examination that he has no documentary evidence to show as to what was the loan amount that the joint family was to pay. He has also admitted that he has no evidence to show that there was any legal necessity. So under such circumstances, the first appellate court has rightly held that the defendant no.1 had failed to prove that the property was sold for any legal necessity.

7. The learned Advocate for Appellant has drawn my attention to the ruling Manibhai and others Vs. Hemraj and others, (1990) 3SCC 68 wherein the Apex court has observed that alienation of joint family property by father to satisfy debts contracted even for his personal benefit and without any legal necessity is binding on his sons on the basis of doctrine of pious obligation if the alienation is not avyavharik or tainted with immorailty or illegality and the debts were antecedent in fact as well as in time to the alienation. The ratio of the above ruling is not disputed and cannot be disputed. However,

if we take into consideration the facts of the said case and the facts of the case in hand, we find that in that case specific evidence was adduced with regard to the debt that the joint family was to pay as well as the other circumstances. However, in the instant case, as mentioned above the defendant no.1 has miserably failed to adduce any cogent and convincing evidence so as to depict that the defendant no.2 was infact in need of money. There is also no evidence to show that at the relevant time the son of defendant no.1 was infact ill and it was necessary to sell the suit property. So the above cited ruling is of no use to the defendant no.1. The learned Advocate for the defendant no.1 has also placed reliance on case of Pandurang Mahadeo Kavade Vs.Annaji Balwant Bokil & Others AIR 1971 Supreme Court 2288, wherein the Apex Court has observed that Proof of legal necessity by alienze is not necessary when specific plea as to want of necessity is not raised. From the pleadings of the instant case, it does appear that in the plaint no specific words such as legal necessity have been used by the plaintiff. However, it is

needless to say that mofusil pleadings have to be construed liberally and ultimately one has to see the sum and substance of the averments in the plaint. If one looks to the plaint in question accordingly, it is quite clear that the plaintiffs wanted to allege that the suit transaction was not entered into for legal necessity and they had also alleged that the defendant no.2 was addicted to drinking, thereby suggesting that the property was sold by him not for the purpose to meet the family expenses, but for his own use. It is true that the plaintiff has not adduced any independent evidence to show that the defendant no.1 was infact addicted to drinking . However, that by itself is not sufficient to negative the plaintiffs case as the defendant no.1 had miserably failed to discharge his burden. Besides this, admittedly in the instant case the plaintiff’s 1 to 3 were not the parties to earlier Suit No.880 of 1976. Naturally, under the circumstances the finding recorded by the first appellate court to the effect that the sale deed in question as well as the decree passed on the basis of the sale deed are not binding on the

present plaintiff is legal and correct. There is no necessity to interfered with the said decision. Hence appeal is dismissed with cost.

(S.R.Sathe, J.)